

From: Gary Ce
To: Microsoft ATR
Date: 1/24/02 8:37pm
Subject: Missing the Crucial Consideration

Your Honor,

The frivolous and anti-free-enterprise case and defences being made regarding the activities of Microsoft are causing the more serious "offence" to be missed.

Effective application of the Microsoft Windows License Agreement requires that copies of the operating system previously legally purchased may as well be disposed of when old hardware is disposed of because re-use on new equipment is prohibited. This is tantamount to saying that the engine in your old car may not be re-used in a different car. If Intel were to follow this rule with processors, or IBM with hard drives, there would be an uproar. Where is the uproar? This seems to me to be an indefensible application of a purchase agreement. If it is not legal, the public should be so informed and free to seek damages. If it is legal, you or anyone who can must move to strike such a law or the already thin illusion of free enterprise in America become even more thin.

Look for industry-wide collusion in the above because the beneficiaries are Microsoft and the hardware vendors et al. Here is how it works;

- Users are never satisfied with the speed of computing equipment over all. (by this I mean real world benchmarks of the entire computing experience, not simply "boot time" or "screen re-draw" or "hard drive spindle speed" and dozens of other terms and tests that have no net meaning).
- Hardware vendors seem to offer a remedy via the purchase of new hardware.
- New hardware generally comes with new Microsoft operating systems.
- The new operating system always uses more hardware resources to deliver the same computing experience. (there are very few "new" applications for computers that are actually new. Most things we do with a new computer are the same things we have been doing for a while, we get the new computer in hopes that it will "go faster".)
- The public hunger for computing equipment that allows more efficient use of time is not satiable in this scenario.
- Thus the consumer or corporate buyer heads dutifully and with anticipation to the store to "upgrade" on a regular basis all software and hardware, yet other than trivial user interface enhancements, all those billions spent don't actually amount to a better computing experience.
- Those of us consultants and professionals who get hired to make this stuff all work more quickly, are not allowed to use the best choice when it comes to operating system (for example Windows 95 on a modern computer) because Microsoft would have us believe there is no legal way to use their better historical products on newer equipment, and our clients have little interest in being the test case to challenge the mighty Microsoft.

This cycle seems set to continue without abatement even though technological accomplishment in the

economy as a whole is advancing exponentially. Failure to focus on this strange little industry collusion would be a mistake if the point of your trial is to improve the lot of the American public with regards to their relation with Microsoft.

In summary, I believe Microsoft has changed the world for the better. Their products are consistently better than the alternative in most categories. If the disingenuous nature of their licensing agreements I have pointed out here could be remedied, all our efforts of late might not be for nothing.

Sincere Regards,
Gary Chernipeski

CC: wes cook, TerrenceWalters@consultant.com@inetgw, Ste...